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Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: EX PARTE NOTICE

WC Docket No. 10-90, *Connect America Fund*

Dear Ms. Dortch:

On June 7, 2016, Steve Metts, CEO, Virgil Barnard, Contracts and Compliance Administrator, Troy Judd, CFO, Kristi Lee, COO, Heath Bowen, Network Manager, and Lana Estes, Customer Support Manager, of Valley Telephone Cooperative, Inc. ("Valley") and Copper Valley Telephone, Inc. ("Copper"), along with Tony Veach and the undersigned of Bennet & Bennet PLLC, met via teleconference with Carol Matthey and Katie King of the Federal Communications Commission's ("FCC" or "Commission") Wireline Competition Bureau ("Bureau"). During the meeting, the representatives from Valley and Copper requested that their correct June 2015 FCC Form 477 data be used in the final version of the Alternative Connect America Cost Model ("A-CAM") in order to give them the option of choosing to accept the FCC's upcoming offer of model-based support. The attached timeline was distributed to meeting attendees.

The Valley and Copper representatives began by providing a summary of their initial June 2015 FCC Form 477 filings and subsequent revisions, including specific details on the information contained in the filings and explanations of what caused them to report incorrect data. In Valley's initial June 2015 FCC Form 477 filing, it reported the availability of broadband service at speeds of 5 Mbps downstream and 0.5 Mbps upstream using DSL technology in 4,006 census blocks in Study Area Codes ("SACs") 452176 and 492176. Copper reported the availability of broadband service at speeds of 5 Mbps downstream and 0.5 Mbps upstream using DSL technology in 1,709 census blocks in SAC 452176 in its initial June 2015 FCC Form 477 filing.¹ In their initial December 2015 FCC Form 477 filings, both Valley and Copper increased

¹ For their June 2015 filings, Valley also reported the availability of broadband service at speeds of 40 Mbps downstream and 3 Mbps upstream using Optical Carrier/Fiber to the End User technology in 547 census blocks in SACs 452176 and 492176, while Copper also reported the availability of broadband service at speeds of 40 Mbps downstream and 3 Mbps upstream using

the reported speeds of their available DSL broadband service to 20 Mbps downstream and 1.5 Mbps upstream due to a misunderstanding of what should be reported in FCC Form 477.² The total number of census blocks in which DSL service was available did not change. It was pointed out that going from 5 to 20 Mbps for downstream speeds in less than 6 months' time throughout all of the reported census blocks would be technically impossible using DSL.

On March 7, 2016, both Valley and Copper submitted revisions to their June 2015 FCC Form 477 filings to increase the reported speeds of their available DSL broadband service to 20 Mbps downstream and 1.5 Mbps upstream, in order to make the June 2015 data consistent with the data in their December 2015 filings. However, due to a misunderstanding of the Form 477 instructions, Valley and Copper came to realize that the data in their December 2015 filings was reported incorrectly. By relying on the incorrect information in their December 2015 filings, Valley and Copper compounded the inaccurate data problem in their March 7, 2016 revisions. Valley and Copper representatives explained that for this March 7 revision, the 20 Mbps downstream and 1.5 Mbps upstream speed data for their DSL services was incorrect and should have remained at 5 Mbps downstream and 0.5 Mbps upstream and that the number of reported census blocks in which DSL service was available was overstated. Valley and Copper misunderstood the portion of the *June 2015 Form 477 Instructions* that states that fixed providers should report that broadband is available if the provider could provision service without an extraordinary commitment of resources and within a reasonable amount of time.³

Valley and Copper explained to Bureau staff that they incorrectly reported DSL speeds of 20/1.5 Mbps because they thought that they should report the estimated maximum speeds that their ADSL2+ service is capable of providing. However, those speeds can be provided to a location only if the location is within a short distance to a Central Office or DSL carrier cabinet.⁴ Valley and Copper have never advertised these speeds nor can these speeds be provided to every census block in their respective study areas. Most importantly, Valley and Copper reported that in order to be able to deploy these speeds they would require financial aid from the subscriber to cover the construction costs (known as "Aid to Construction").

Valley and Copper further explained that they incorrectly assumed that they should report that their DSL services are available in 5,715 census blocks in their study areas in their June

Optical Carrier/Fiber to the End User technology in 33 census blocks in SAC 452176. These data points were not changed in subsequent revisions.

² Valley and Copper filed revisions to correct the errors in their December 2015 Form 477 filings on April 28, 2016. Those revisions are not relevant to the dialogue because that data will not be used by the FCC to craft the final version of the A-CAM.

³ See FCC Form 477, Local Telephone Competition and Broadband Reporting, Instructions, For Filing Data as of June 30, 2015, Due September 1, 2015, OMB Control No. 3060-0816, Section 5.3, p. 17 ("*June 2015 Form 477 Instructions*").

⁴ Valley and Copper noted that generally speaking, these higher speeds can only be provided to a location if it is no more than 3,000 cable feet from Central Office or DSL carrier cabinet, but other engineering and network management factors could preclude the provision of 20/1.5 Mbps downstream rates. Valley and Copper have roughly 140 Central Offices and DSL carrier cabinets located throughout their study areas. In July 2015, Valley and Copper were providing DSL broadband service with contractually agreed to download speeds of greater than 5 Mbps downstream to only 24 locations.

2015 Form 477 filings. This assumption was based on their experiences with extending new service. Valley and Copper explained that in the past, they have extended broadband services to “distant customers” when such projects fit into their capital budgets. They also explained that they extended broadband services to these cost-prohibitive locations when customers agreed to pay their portion of the deployment costs. For many locations in their study areas, if customers requested service, the Aid to Construction required from the customers would be significant. To compound the situation, Valley and Copper explained that they did not take into consideration the *June 2015 Form 477 Instructions* that state that fixed broadband is available in a census block only if the provider could provision service “within a service interval that is typical for that type of connection.”⁵

Next, the Valley and Copper representatives explained that after reviewing information in the *Rate-of-Return Reform Order* related to maximum capital expenditures per location/per project,⁶ they realized that they had been incorrectly interpreting what is required to be reported on the Form 477. They then notified the Bureau on April 25, 2016 and asked that their March 7 revisions be withdrawn. In a conversation with Bureau staff, this informal request was denied.

On April 28, 2016, Valley and Copper each submitted a second revision to their June 2015 FCC Form 477 filings. Valley revised its filing to (i) lower the reported speed of its DSL broadband service to 5 Mbps downstream and 0.5 Mbps upstream, and (ii) reduce the number of census blocks in SACs 452176 and 492176 in which its DSL broadband service is available to 1,582. Copper revised its filing to (i) lower the reported speed of its DSL broadband service to 5 Mbps downstream and 0.5 Mbps upstream, and (ii) reduce the number of census blocks in SAC 452176 in which its DSL broadband service is available to 1,195. Contemporaneously, with these second revisions, Valley and Copper submitted a joint request within the A-CAM challenge proceeding filing window challenging the accuracy of their own data and asking that their correct June 2015 Form 477 data be used in the final version of the A-CAM.

Next, the Valley and Copper representatives explained that the Bureau has a number of options for ensuring that Valley’s and Copper’s correct June 2015 FCC Form 477 broadband deployment data is incorporated into the final version of the A-CAM. First, the Valley and Copper representatives stated that the Bureau should accept and review Valley and Copper’s

⁵ *June 2015 Form 477 Instructions* at Section 5.3, p. 17. Shortly after the FCC revised its Form 477 program in 2013, the Bureau released guidance on the reporting process. With respect to the broadband deployment data that should be reported by fixed providers, the Bureau stated that “[f]ixed broadband service is ‘available’ in a census block if the provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 Kbps in at least one direction to end users in the block.” *Wireline Competition Bureau Releases Data Specification For Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, DA 13-1805, p. 5 (Aug. 26, 2013). Without explanation, the definition of a typical service interval as 7 to 10 business days was removed in the Form 477 instructions for the June 2015 reporting period.

⁶ *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Order and Order On Reconsideration, and Further Notice Of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (“*Rate-of-Return Reform Order*”).

joint filing made in the A-CAM challenge proceeding, and grant their request that their correct June 2015 Form 477 broadband data be used in the final version of the model.⁷ While the A-CAM challenge proceeding is focused toward correcting the competitive coverage data contained in the A-CAM, it has the secondary purpose of ensuring that discreet corrections to June 2015 Form 477 data that are submitted within the challenge window are included in the final version of the A-CAM. This secondary purpose was expressly outlined by the Commission in the *Rate-of-Return Reform Order*.⁸ There, the Commission noted that numerous carriers submitted corrections to Form 477 filings following the release of version 2.1 of the A-CAM. The possibility of a model option sparked most, if not all, rate-of-return carriers to review their June 2015 Form 477 data and submit corrections if necessary.

The Valley and Copper representatives continued by explaining that based on this experience with the prior version of the A-CAM, the Commission acknowledged that all carriers should have an opportunity to correct the broadband data that will be used in the final A-CAM, and invited the submission of any correction to June 2015 Form 477 data as part of the A-CAM challenge process. Specifically, it “direct[ed] the Bureau to review and incorporate as appropriate *any* Form 477 corrections to June 2015 data that are received in [the A-CAM] challenge process, so that these updates are reflected in the final version of the model that is released for purposes of the offer of support.”⁹ The Commission also reminded would-be filers that “[a]ny updated or revised coverage data filed by a party as part of [the A-CAM] challenge process should also be reflected in a revision to that party’s Form 477 submissions.”¹⁰ The Commission did not limit the challenge process to objections of other broadband providers’ data, and the Commission’s instructions to the Bureau and carriers are clear. Valley and Copper’s joint request to include their correct June 2015 data in the final version of the A-CAM was submitted within the A-CAM challenge process filing window, and that request was substantiated by the submission of revised Form 477 data. Valley and Copper timely submitted their revisions to ensure that accurate data will be used in the model and to prevent the FCC from knowingly use erroneous information. In this limited instance, the Bureau should grant Valley and Copper’s request.

Alternatively, Valley and Copper requested that the Bureau simply reject Valley and Copper’s March 7 revisions to their June 2015 Form 477 data because the Bureau is aware that both filings contain erroneous data. If the March 7 revisions are rejected, the data contained in Valley and Copper’s initial June 2015 Form 477 filings correctly showing DSL speeds of 5/0.5

⁷ *Valley Telephone Cooperative Inc. and Copper Valley Telephone, Inc. Challenge Comments*, WC Docket No. 10-90 (filed Apr. 28, 2016). Additionally, Valley and Copper challenged the designation of certain census blocks within their study areas as served by an unsubsidized competitor. Valley and Copper’s joint challenge demonstrates that the competitor at issue (i) does not provide at least one broadband service plan that meets the FCC’s standard of *actual* speeds of at least 10/1 Mbps; and (ii) does not provide 10/1 Mbps broadband service at a rate that is at or below the applicable reasonably comparable benchmark rate. *See Comments Of Valley Telephone Cooperative Inc. And Copper Valley Telephone Inc.*, WC Docket No. 10-90 (filed Apr. 28, 2016). Other carriers filed challenges against the same competitor detailing the competitor’s failure to meet the broadband speed and price requirements.

⁸ *See Rate-of-Return Reform Order* at ¶71.

⁹ *Rate-of-Return Reform Order* at ¶71 (emphasis added).

¹⁰ *Id.* at footnote 147.

Mbps will be incorporated into the final version of the A-CAM. The Form 477 filing requirement that carriers certify to the accuracy of their data compel the Bureau to reject the March 7 revisions. Valley and Copper's April 25 written notice informing the Bureau by email (copy attached) that their March 7 revisions contain incorrect data act as express revocations of their certifications that the data is accurate. Without these certifications, the Form 477 filings should be rendered incomplete, and therefore not acceptable for filing.

Valley and Copper also discussed obtaining a waiver of the March 30, 2016 administrative deadline for submission of corrected June 2015 FCC Form 477 broadband deployment data for inclusion in the final version of the A-CAM. By granting Valley and Copper's joint request to waive the March 30 administrative deadline, the FCC will have the most accurate data for both the deployed speeds and the census blocks. Valley and Copper stated that the Commission's March 30 cutoff was adopted purely as an administrative tactic to keep the proceeding moving forward as swiftly as possible; it was not intended to preserve inaccurate data inadvertently filed prior to that date. Therefore, strict application of the administrative cutoff in the instant case would frustrate the underlying purpose of the rule and disserve the public interest by preventing Valley and Copper from having the option to choose the offer of model-based support. Valley and Copper pointed out that by denying Valley and Copper's joint request to correct their June 2015 data, the Bureau would be relying on information that it now knows to be erroneous.

Valley and Copper explained that it is critical that their correct June 2015 Form 477 data be used in the final version of the A-CAM – if it is not, neither will have the option of choosing to accept the FCC's forthcoming offer of model-based support. As set out in the *Rate-of-Return Reform Order*, the A-CAM will not be available to any rate-of-return carrier that has deployed 10/1 Mbps broadband service to 90 percent or more of its eligible locations in a state.¹¹ Granting Valley and Copper's request, using any of the alternatives suggested, will give Valley and Copper the option to choose the offer of model-based support and receive the regulatory certainty that is produced by the A-CAM. This will enable Valley and Copper to extend broadband service to rural and remote customers within their study areas.

Finally, Valley and Copper noted that granting their request will not slow down the Bureau's momentum because the Bureau will not need to perform any time-consuming updates to the A-CAM after it accepts Valley and Copper's revised June 2015 FCC Form 477 data. Incorporating Valley and Copper's revised broadband coverage data will not add any further delay to the A-CAM process or the release of the final version of the A-CAM.

¹¹ *Id.* at ¶66.

Pursuant to Section 1.1206 of the FCC's rules, this ex parte is being filed electronically with the Commission using the electronic comment filing system.

Respectfully submitted,

/s/ Caressa D. Bennet

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Attachments

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